

REMARKS

Claims 4, 9-32, and 34-41 were previously pending in this application. By this amendment, Applicant is canceling claim 38 without prejudice or disclaimer. Claims 4 and 36 have been amended. As a result, claims 4, 9-32, 34-37, and 39-41 are pending for examination with claim 4 being an independent claim. No new matter has been added.

Rejection of Claims Under 35 U.S.C. §112, first paragraph

The Examiner rejects claims 4 and 9-41 under 35 U.S.C. §112, first paragraph as lacking enablement.

The Examiner states in Paper 14, page 2, that based on the previous amendment (Paper No. 13) and declaration (Paper No. 12) filed March 3, 2003, the rejections of claims 4 and 9-41, under 35 U.S.C. §112 have been overcome in part. The Examiner indicates that the declaration does not overcome the scope rejection regarding the enablement of the recited method comprising "any" sample because the declaration shows that the recited method is enabling for human plasma, urine, or tissue, but not for any non-human plasma or urine or tissue. Applicant has amended claim 4 to include the word "human". Support for the amendment is found at least at page 12, line 25. Applicant believes that the amendment obviates the Examiner's rejection of claims 4 and 9-41 and respectfully requests reconsideration and withdrawal of the rejection.

The Examiner states in Paper 14, page 3, that an additional basis for the rejection of claims 4 and 9-41 is that "neither the specification nor said declaration discloses that the recited method encompasses any antibody or antigen-binding fragment other than those that bind CD59". Applicant has amended claims 4 and 36 to clarify that the antibody and/or antigen-binding fragment thereof is an antibody or antigen-binding fragment thereof that is directed to CD59. Support for the amendment is found at least at page 9, lines 10-20. Applicant believes that the claim amendments obviate the Examiner's rejection and respectfully requests reconsideration and withdrawal of the rejection.

In view of the foregoing amendments and arguments, Applicant believes that the foregoing rejections of claim 7 under 35 U.S.C. §112, first paragraph, should be withdrawn.

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CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment that the application is not in condition for allowance, the Examiner is requested to contact the Applicant's representative at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,


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